

My worker performs similar work for other businesses so the worker is an independent contractor.

NOT TRUE. Performing similar work for other businesses is not, by itself, a determining factor. In addition, the relationship the worker may have with the other businesses is not a controlling factor when determining their status as an employee or independent contractor with your business. The working relationship with each business is looked at separately.

My worker has a city business license and business card, so the worker is an independent contractor.

NOT TRUE. A city business license and business card, by themselves, do not make a worker an independent contractor. All of the common law factors need to be reviewed and weighed with respect to the specific circumstances of the services provided by each worker.

I pay my workers solely by commission; therefore, they are independent contractors.

NOT TRUE. The method of payment is not, by itself, a determining factor. All of the common law factors need to be considered and weighed to determine whether a worker is an employee. If the worker is an employee, then all remuneration for services (salary, hourly pay, piece rate, commissions, bonuses, stock options, vehicle, etc.) is wages.

For more information, refer to the information Sheet: Wages (DE 231A)

To help employers correctly classify workers and report payroll taxes, EDD offers various payroll tax seminars throughout California. For seminar dates, times, and locations, please go to the EDD Web site at www.edd.ca.gov/taxsem or contact our Taxpayer Assistance Center at 1-888-745-3886.



STATE OF CALIFORNIA

LABOR AND WORKFORCE DEVELOPMENT AGENCY

EMPLOYMENT DEVELOPMENT DEPARTMENT

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INDEPENDENT CONTRACTORS MISCONCEPTIONS

For more information, refer to the Information Sheet: Employment (DE 231) which is available on the EDD Web site at www.edd.ca.gov

When is an individual an employee?

An individual is an employee when hired by an employer to perform services and either (1) the law defines the worker as an employee (statutory employee) or (2) the employer has the right to exercise control over the manner and means by which the worker performs his/her services (common law employee).

COMMON MISCONCEPTIONS

1

If I issue an Internal Revenue Service (IRS) Form 1099-MISC, the worker is an independent contractor.

NOT TRUE. An IRS Form 1099-MISC is simply a method the government uses to track and report certain types of nonemployment income. When you provide an IRS Form-1099 MISC to a worker for payment of services, it does not automatically make the worker an independent contractor.

2

If I pay a worker less than \$600 in a year, then the worker is not subject to California payroll taxes.

NOT TRUE. The amount paid to a worker is not a factor used to determine whether a worker is an employee or independent contractor. The amount paid to a worker may determine if you should issue an IRS Form 1099-MISC. Contact the IRS for the requirements for issuing an IRS Form 1099-MISC at 1-800-829-1040 or go to the IRS Web site at www.IRS.gov.

3

The part-time, temporary, probationary, and substitute workers I employ are day laborers or casual laborers, not employees.

NOT TRUE. The number of hours worked is not a factor used to determine whether a worker is an employee. Whether you call your workers part-time, full-time, temporary, permanent, probationary, or substitute does not change the fact that they are employees.

Refer to the Information Sheet: Casual Labor (DE 231K) for more information.

4

When a family member works for me, he/she is not an employee.

NOT TRUE. Family members working for your business are employees and subject to California payroll taxes unless certain conditions are met.

For more information, refer to Information Sheet: Family Employment (DE 231FAM)

5

My worker and I have signed a written contract that makes my worker an independent contractor.

NOT TRUE. A written contract does not automatically make a worker an independent contractor. You need to look at certain factors, viewed in total, to determine if a worker is a common law employee or independent contractor. A written contract is only one of the factors you should consider.

For more information, refer to the Information Sheet: Employment (DE 231).

6

My competitors treat their workers as independent contractors; therefore, it is okay for me to treat my workers as independent contractors.

NOT TRUE. The law defines employment relationships, not you or the actions of your competitors. If you misclassify your workers as independent contractors, EDD may assess you for the unpaid taxes for any unreported employees.